

In re) Fair Hearing No. B-09/09-486
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 Appeal of)

The petitioner appeals a decision by the Department for Children and Families, Health Access Eligibility Unit, to not reimburse payment for a premium for the Catamount Health Premium Assistance Program (CHAP) for the month of September 2009, a period in which she was not eligible for CHAP. The issue is whether the petitioner should be reimbursed or have the amount credited towards her Vermont Health Access Program (VHAP) premiums.

The facts are not in dispute. The decision is based upon the representations and materials submitted by the parties.¹

¹ The recommendation was filed with the Board on October 21, 2009. The Department filed a Motion with the Board on November 3, 2009, the day of the Board argument. Petitioner had earlier notified the Board that she would not be present due to a death in her family and that she did not want the matter continued. Although the Department's motion was not timely filed pursuant to Fair Hearing Rule No. 1000.4B, the Board considered the Department's oral legal argument.

FINDINGS OF FACT

1. The petitioner is a sixty-one year old whose health problems include diabetes and high blood pressure. She has been unemployed for approximately two years.

2. Petitioner received health coverage through CHAP. She received a premium bill in the amount of \$110 due August 15, 2009 for September 2009 CHAP coverage.

3. Petitioner wrote the Department in mid-August 2009 that her unemployment compensation was stopping on August 21, 2009. She enclosed the \$110 payment in the event that the Department could not switch her coverage back to VHAP (Vermont Health Access Plan). She asked that her check be returned if she was reenrolled in VHAP.

4. In a Notice of Decision dated August 25, 2009, the Department notified petitioner that she was eligible for VHAP as of that day.

5. Petitioner requested a fair hearing on or about September 3, 2009 seeking reimbursement of \$110.

ORDER

The Department's decision is reversed.

REASONS

The Vermont Legislature created both VHAP and CHAP to provide health care coverage to uninsured Vermonters who meet certain eligibility criteria. W.A.M. §§ 4100 *et seq.* and 5900 *et seq.*

VHAP provides coverage to individuals whose income is less than 185 percent of the Federal Poverty Level. CHAP provides coverage to individuals who do not qualify for VHAP provided their income is no more than 300 percent of the FPL.

Both VHAP and CHAP include premiums from the health care assistance unit as a condition of initial eligibility and continuing eligibility.² The amount of the premium is determined by the income at the time the premium bill was generated. W.A.M. § 4111.

In petitioner's case, the CHAP premium bill was generated prior to the change in her eligibility for VHAP and prior to the period intended for CHAP coverage. To ensure health assistance coverage if the Department could not switch her eligibility from CHAP to VHAP prior to September 2009, petitioner paid the premium. However, petitioner received no benefit from CHAP during September 2009.

²In terms of VHAP, the household pays the premium to the State. In terms of CHAP, the household pays the premium to the State who, in turn, passes the household share and the State share to a private health insurer.

The Department is saying that once the premium bill is generated and the premium paid, the premium for CHAP cannot be reimbursed even though an assistance household is no longer eligible for CHAP.

The Department has pointed to the legislative history in support of their position. In the 2004 Appropriation Bill (Act 66 of 2003), the Legislature shifted the payment of premiums in Vermont's health care programs from retrospective to prospective. The purpose included adjusting the billing cycle to help recipients stay current in order to avoid delinquencies and termination of coverage. Sec. 147(g)(1)(C). Coverage for a particular program is based upon payment of the premium for that program. Sec. 147(g)(5).

The problem with the Department's argument is that petitioner was not eligible for CHAP for September and would receive no CHAP benefit from payment of the premium. In addition, her eligibility switch to VHAP is based on a reduction of income meaning that she was asked to pay the higher CHAP premium although her VHAP premium is lower and in accord with her income.

The legislative intent is to create a system that enables applicants and recipients to maintain their

eligibility. Both VHAP and CHAP are remedial programs. In this case, the Department can either refund the portion of the premium in excess of petitioner's VHAP premium or credit the excess to future VHAP premiums. Accordingly, the Department's decision is reversed consistent with the above decision. 3 V.S.A. § 3091(d).

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